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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,518	05/11/2005	Daniel Thomas Lintell	P33148USw	5100
23347 7590 04/30/2009 GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398				
EXAMINER BYRD, LATRICE CHENWILL				
ART UNIT 3782		PAPER NUMBER		
NOTIFICATION DATE 04/30/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/534,518

Applicant(s)

LINTELL, DANIEL THOMAS

Examiner

LATRICE BYRD

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-20,22-29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-8,10-20,22-29 and 31-33 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 12 recites "the frangible connection is a perforate connection." Based on the blank in figure 6, the cover section of the closure part is initially separate from the outer surface of the container part before the container is formed. It is not understood how a perforate connection can be formed from two separate pieces of material.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: The action that of the closure part. Line 3 recites "until disconnected, prevents the closure part...." The claim

does not particularly point out what is being prevented until disconnected. For the purpose of examination, "from" will be added after "part" in line 3.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 6, 10-11, 13-20, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherman, II et al. (USPN 4,535,929) and .

8. In re claim 1, Sherman, II et al. discloses a package (10) having a container part which defines a cavity having an opening for receiving a product, a closure part (140) which is movable from a closed position, in which it closes the opening to the cavity, to an open position in which it opens the opening to the cavity, and an outer surface (120) having an address thereon (fig. 12) which is covered by the closure part in the closed position thereof, wherein the closed position is a first closed position, the closure part has a first configuration in the first closed position and is adapted to be moved from the first configuration to a second configuration in which it is able to adopt a second closed position in which it closes the opening to the cavity, but leaves the address uncovered, wherein the closure part has a cover section or main portion which in the first closed position covers the address and which in the second closed position does not cover the address, wherein the cover section of the closure part is a detachable cover section

adapted to be detached from the closure part, detachment of the detachable cover section moving the closure part from the first to the second configuration, wherein the closure part has a permanent section (120) which in the first and second closed positions is secured to the container part to close the opening to the cavity, and wherein the detachable cover section overlies the permanent section.

9. In re claim 2, Sherman, II et al. discloses a package in which the closure part (140) is adapted in use to be sequentially moved from the first closed position to the open position in its first configuration and from the open position to the second closed position in its second configuration.

10. In re claim 6, Sherman, II et al. discloses a package in which the permanent section (120) is secured to the container part in the open position.

11. In re claim 10, Sherman, II et al. discloses a package in which the cover section (140) of the closure part is detachably affixed to the outer surface of the container part in the first closed position.

12. In re claim 11, Sherman, II et al. discloses a package in which the cover section of the closure part is frangibly connected to the outer surface of the container part in the first closed position.

13. In re claim 13, Sherman, II et al. discloses a package in which the closure part and container part are integrally formed.

14. In re claim 14, Sherman, II et al. discloses a package in which the closure part is hinged to the container part.

15. In re claim 15, Sherman, II et al. discloses a package which is rigid or semi-rigid.

16. In re claim 16, Sherman, II et al. discloses a package in the form of a box-like structure.
17. In re claim 17, Sherman, II et al. discloses a package made from a board material.
18. In re claim 18, Sherman, II et al. discloses a package which is formed from sheet material.
19. In re claim 19, Sherman, II et al. discloses a package wherein the closure part has a cover section which in the first closed position covers the address and which in the second closed position does not cover the address, and in which the cover section is formed from a first piece of sheet material and the balance of the package is formed from a second piece of sheet material.
20. In re claim 20, Sherman, II et al. discloses a package in which the address is on an outer surface of the container part (fig. 2-3).
21. In re claim 23, Sherman, II et al. discloses a package in which the closure part is fixedly connected to the container part in the first closed position through a non-restorable connection at 122.
22. In re claim 24, Sherman, II et al. discloses a package adapted such that the closure part is unable to be moved from the first closed position to the open position unless the non-restorable connection is disconnected by removing the tab 150.
23. In re claim 27, Sherman, II et al. discloses a package in which the permanent section of the closure part is secured to the container part at a joint (32,52) about which

the closure part is movable relative to the container part between its respective positions.

24. In re claim 28, Sherman, II et al. discloses a package in which the closure part is fixedly connected to the container part in the first closed position through a non-restorable connection which, until disconnected, prevents the closure part from moving about the joint.

25. In re claim 29, Sherman, II et al. discloses a blank of sheet material dimensioned and arranged to form a package.

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claims 7, 12, 24 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman, II et al. (USPN 4,535,929) in view Rosenberg, Jr. (USPN 3,591,071).

28. In re claim 7, Sherman, II et al. discloses the claimed invention except wherein the cover section forms an extension of the permanent section. Rosenberg, Jr. teaches a cover section (14) formed from an extension of a permanent section (6). It would have been obvious to one of ordinary skill in the art at the time of the invention to have extended the cover section of Sherman, II et al. from the permanent section as taught

by Rosenberg, Jr. in order to open the closure part from the same side of the carton used to reclose the carton with the permanent section.

29. In re claims 12 and 31-32, Sherman, II et al. discloses the claimed invention except the frangible connection being a perforate connection. Rosenberg, Jr. teaches perforated frangible connection (35). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the frangible connection of Sherman, II et al. with a perforated connection in order to easily tear away a portion of the cover.

30. In re claim 33, Sherman, II et al. discloses the claimed invention except wherein the address is in a recess in the outer surface. Rosenberg, Jr. teaches a recess defined in the front panel 3 by the connection of the panels (21,22) and the flap 20 shown best in figure 2. It would have been obvious to one of ordinary skill in the art at the time of the invention to have placed the address of Sherman, II et al. in the recess as taught by Rosenberg, Jr. with perforate connections (23,24) in order to display the address for initial shipping and recover the address for returning the shipment.

31. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman, II et al. (USPN 4,535,929) in view Weinstein et al. (USPN 6,564,945).

32. In re claims 25-26, Sherman, II et al. discloses the claimed invention except the closure part being provided with instructions on the permanent section. Weinstein et al. teaches instructions on a closure part (40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have included instructions on the

closure part of Sherman, II et al. as taught by Weinstein et al. in order to let the user know exactly how to operate the closure.

Allowable Subject Matter

33. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

34. The following is a statement of reasons for the indication of allowable subject matter: Sherman, II et al. does not disclose a container part wherein the side that has the opening to the cavity is covered by the permanent section to close the opening and wherein the cover section depends from the permanent section to overlie the address on a second side.

Response to Arguments

35. Applicant's arguments, see page 8 of remarks, filed 12/30/08, with respect to claims 12, 23, 24 and 28 have been fully considered and are persuasive. The objection of claims 12, 23, 24 and 28 has been withdrawn.

36. In response to applicant's argument that "Sherman does not disclose a detachable cover section of a closure part adapted to be detached from a closure part...", page 10, lines 3-6 and "... a permanent section...", page 10, lines 6-9, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Both flaps (120,140) are capable of both being detachable or permanent. One may rip away one flap while having the other flap remain attached.

37. In response to applicant's argument that there is no suggestion to combine the reference of Rosenberg and further Rosenberg "does not show that the tear-out panel (14) overlies the permanent cover panel (6)....", the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have had the tear-out panel of Rosenberg overlie the permanent cover panel, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

38. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fleming (USPN 5,497,876) also discloses at least all the limitations of claim 1 of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 7:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/
Examiner, Art Unit 3782

/Gary E. Elkins/
Primary Examiner, Art Unit 3782